

# Directions from Chief Health Officer in accordance with emergency powers arising from declared state of emergency

## COVID-19 Vaccinated Activities Directions (No 3)

*Public Health and Wellbeing Act 2008 (Vic)*

Section 200

I, Adjunct Clinical Professor Brett Sutton, Chief Health Officer, consider it reasonably necessary to protect public health to give the following directions pursuant to section 200(1)(d) of the **Public Health and Wellbeing Act 2008 (Vic) (PHW Act)**:

### PART 1 — PRELIMINARY

#### 1 Preamble

- (1) The purpose of these directions is to impose certain mandatory vaccination requirements in order for specific businesses to provide goods or services to the public to limit the spread of severe acute respiratory syndrome coronavirus 2 (**SARS-CoV-2**) within the population in these settings.
- (2) These directions must be read together with the **Directions currently in force**.

#### 2 Citation

These directions may be referred to as the **COVID-19 Vaccinated Activities Directions (No 3)**.

#### 3 Commencement and revocation

- (1) These directions commence at 11:59:00pm on 9 October 2021 and end at 11:59:00pm on 21 October 2021.
- (2) The **COVID-19 Vaccinated Activities Directions (No 2)** are revoked at 11:59:00pm on 9 October 2021.

#### 4 Application of these directions

- (1) With the exception of clause 6(2), these directions apply to:
  - (a) **specified businesses** in the Restricted Area, namely:
    - (i) outdoor **personal training**; and
  - (b) **specified venues** in the Restricted Area and Regional Victoria, namely:
    - (i) theatres.
- (2) Clause 6(2) applies to enable **Service Victoria** to conduct testing and related work required for the development and improvement of the **Service Victoria system**.

## PART 2 — BUSINESS OPERATOR OBLIGATIONS

### 5 Requirement to collect, record, hold and sight vaccination information

- (1) If an **operator** will or intends to:
  - (a) on and after the **relevant date**, provide the goods or services of the specified business to a group of **patrons** in excess of the **patron limit**, the operator must collect, record and hold **vaccination information** of each patron and **worker**; or
  - (b) permit **workers** into a specified venue in excess of the **capacity limit**, the operator must collect, record and hold **vaccination information** of each worker.
- (2) An operator:
  - (a) must not, and must ensure that its workers do not provide the relevant goods and services in the Restricted Area to patrons in excess of the patron limit; or
  - (b) must not permit workers to enter a specified venue in excess of the capacity limit,unless it complies with the requirements specified in subclause (3).
- (3) An operator may:
  - (a) provide the **relevant** goods or services of the specified business in the Restricted Area to patrons in excess of the patron limit, but to no more than the **vaccinated patron limit**; or
  - (b) permit workers into a specified venue in excess of the capacity limit, but not more than the **vaccinated capacity limit**,only if:
  - (c) its workers are **fully vaccinated or excepted persons**; and
  - (d) in relation to specified businesses, the operator first sights vaccination information collected in accordance with subclause (1) to show that each patron, is either:
    - (i) fully vaccinated; or
    - (ii) an excepted person.
- (4) For the purposes of sub-clause (3) if an operator does not hold vaccination information about a worker, a patron, the operator must treat that person as if they are **unvaccinated**.
- (5) An operator must treat a person younger than 12 years of age as a fully vaccinated person, and may provide services to that person and allow that person access to a specified venue, without complying with subclause (3)(d).

## PART 3 — USE OF VACCINATION INFORMATION

### 6 Authorisation for request, collection and storage and use of information

- (1) For the purposes of complying with clause 5 the operator is authorised by this provision:
  - (a) to request, collect, store and use information that is derived from a record of information that was made under, or in accordance with, the **AIR Act**; and
  - (b) to use information it holds under clause 5.
- (2) The **Service Victoria CEO** is authorised:
  - (a) to request, collect, store and use information that is derived from a record of information that was made under, or in accordance with, the AIR Act; and
  - (b) deliver a **digital vaccination certificate** and related information through the Service Victoria system using information collected or requested under 6(2)(a);
  - (c) collect, store, use and disclose a hashed unique identifier for the Service Victoria app installation, and the first name, middle name, last name, date of birth, and date of validity from a digital vaccination certificate, each time a digital vaccination certificate is transferred from the **Commonwealth System** to the Service Victoria system; and
  - (d) handle information as necessary to conduct reporting, evaluation and analysis for the purposes of COVID-19 outbreak management collected or requested under 6(2)(a).

### 7 Disclosure to Authorised Officers

- (1) An **Authorised Officer** may request an operator or its workers to produce to the Authorised Officer any vaccination information held by the operator under clause 5.
- (2) If an Authorised Officer makes a request to a person under sub-clause 7, the person must comply with the request.

*Note: Authorised Officers may also be authorised to exercise the public health risk power in section 190(1)(d) of the PHW Act to require the provision of any information needed to investigate, eliminate or reduce the risk to public health.*

## PART 4 — DEFINITIONS

### 8 Definitions

For the purposes of these directions:

- (1) **AIR Act** means *Australian Immunisation Register Act 2015* (Cth);
- (2) **Area Directions** means the **Area Directions (No 25)** as amended or replace from time to time;

- (3) **Authorised Officer** has the same meaning as in the **PHW Act**;
- (4) **capacity limit** in relation to a **specified venue** means the maximum number of **workers** permitted at that specified venue, as specified in Column 2 of Schedule 2;
- (5) **Commonwealth** means the Commonwealth Government of Australia;
- (6) **Commonwealth System** means the digital system provided by the Commonwealth;
- (7) **COVID-19 vaccine** means a vaccine to protect a person against SARS-CoV-2 that:
  - (a) has been registered or provisionally registered by the Therapeutic Goods Administration; or
  - (b) has been approved by a comparable overseas regulator, as determined by the Therapeutic Goods Administration under regulation 16DA(3) of the **Therapeutic Goods Regulation 1990** of the Commonwealth;
- (8) **density quotient** means the maximum number of **workers** permitted in each square metre of space (with infants under one year of age not counting towards this limit) that is accessible to **workers**;
- (9) **digital vaccination certificate** means a digital certificate generated by the **Commonwealth system** of a person's **vaccination status**;
- (10) **Directions currently in force** has the same meaning as in the **Workplace Directions**;
- (11) **excepted person** means a person:
  - (a) who is under 12 years of age; or
  - (b) that has obtained certification from a **medical practitioner** that the person is unable, due to a **medical contraindication**, to receive a dose, or a further dose, of a **COVID-19 vaccine**;
- (12) **fully vaccinated** in relation to a person means a person who has received two doses of a **COVID-19 vaccine**;
- (13) **indoor space** means an area, room or **premises** that is or are substantially enclosed by a roof and walls that are temporary or permanent structures rising either from floor to ceiling or are at least 2.1 metres high, regardless of whether the roof or walls or any part of them are open or closed;
- (14) **medical contraindication** means the following contraindications to the administration of a **COVID-19 vaccine**:
  - (a) anaphylaxis after a previous dose;
  - (b) anaphylaxis to any component of the vaccine, including polysorbate or polyethylene glycol;
  - (c) in relation to AstraZeneca:
    - (i) history of capillary leak syndrome; or

- (ii) thrombosis with thrombocytopenia occurring after a previous dose;
  - (d) in relation to Comirnaty or Spikevax:
    - (i) myocarditis or pericarditis attributed to a previous dose of either Comirnaty or Spikevax; or
  - (e) any other serious adverse event attributed to a previous dose of a **COVID-19 vaccine** (and without another cause identified) that has been reported to state adverse programs and/or the Therapeutic Goods Administration, and has been determined following review by, and/or on the opinion of, an experienced immunisation provider or medical specialist taking into account whether repeat vaccine doses would be associated with a risk of recurrence of the serious adverse event;
- (15) **medical practitioner** means:
- (a) a general practice registrar on an approved 3GA training placement; or
  - (b) a public health physician; or
  - (c) a general physician; or
  - (d) an infectious disease physician; or
  - (e) a clinical immunologist; or
  - (f) a gynaecologist; or
  - (g) an obstetrician; or
  - (h) a general practitioner who is vocationally registered; or
  - (i) a general practitioner who is a fellow of the Royal Australian College of General Practitioners (RACGP); or
  - (j) a general practitioner who is a fellow of the Australian College of Rural and Remote Medicine (ACRRM);
- (16) **outdoor space** means a space that is not an **indoor space**;
- (17) **operator** in relation to a:
- (a) **specified business** in the **Restricted Area** means a person identified in Column 2 of Schedule 1 for that business; or
  - (b) **specified venue** means the person who operates that **specified venue** in either the **Restricted Area** or **Regional Victoria**;
- (18) **partially vaccinated** in relation to a person means the person has received one dose of a **COVID-19 vaccine** and is not an **excepted person**;
- (19) **patron** means a member of the public to whom goods or services are provided by a **specified business**;
- (20) **patron limit** in relation to a **specified business** means the maximum number of patrons as specified in Column 4 of Schedule 1;

- (21) **personal trainer** means a person who is, or a body corporate that provides the services of, an exercise professional who provides individually tailored client assessments, program development, instruction and demonstration, supervised exercise sessions and client reviews and who operates a business that holds an Australian Business Number or Australian Company Number registered with the Australian Securities and Investments Commission;
- (22) **personal training** means a service provided by a **personal trainer** or the **worker** of a personal trainer;
- (23) **PHW Act** means the **Public Health and Wellbeing Act 2008**;
- (24) **premises** has the same meaning as in the **PHW Act**;
- (25) **relevant date** in relation to a **specified business** means the date specified in Column 6 for that business;
- (26) **Regional Victoria** has the same meaning as in the **Area Directions**;
- (27) **Restricted Activity Directions (Regional Victoria)** means the **Restricted Activity Directions (Regional Victoria) (No 14)** as amended or replaced from time to time;
- (28) **Restricted Activity Directions (Restricted Areas)** means the **Restricted Activity Directions (Restricted Area) (No 21)** as amended or replaced from time to time;
- (29) **Restricted Area** has the same meaning as in the **Area Directions**;
- (30) **Service Victoria** has the same meaning as in the **Service Victoria Act 2018**;
- (31) **Service Victoria CEO** has the same meaning as in the **Service Victoria Act 2018**;
- (32) **Service Victoria system** means the digital system provided by the **Service Victoria CEO** and other parts of the Victorian Government and includes the Service Victoria app;
- (33) **specified business** means a business identified in Column 1 of Schedule 1;
- (34) **specified venue** means a venue identified in Column 1 of Schedule 2;
- (35) **unvaccinated** in relation to a person means a person who has not received a dose of a **COVID-19 vaccine** and is not an **excepted person**;
- (36) **vaccinated capacity limit** in relation to a **specified venue** means the maximum number of **workers** as specified in Column 3 of Schedule 2;
- (37) **vaccinated patron limit** in relation to a **specified business** means the maximum number of patrons as specified in Column 5 of Schedule 1;
- (38) **vaccination information** means information about a person's **vaccination status** and includes information that is derived from a record of information that was made under, or in accordance with, the AIR Act;

*Note: **vaccination information** may be recorded in a variety of documents, such as a letter from a **medical practitioner**, a certificate of immunisation or an*

*immunisation history statement obtained from the Australian Immunisation Register.*

- (39) **vaccination status** means one of the following in relation to a person:
- (a) **fully vaccinated**; or
  - (b) **partially vaccinated**; or
  - (c) **unvaccinated**; or
  - (d) **excepted person**;
- (40) **worker** in relation to a:
- (a) **specified business** means a person identified in Column 3 of Schedule 1 for that **business**; and
  - (b) **specified venue** means any person who works at the **specified venue** (including a volunteer, employee or contractor).

## 9 Penalties

- (1) Section 210 of the PHW Act provides:

### **False or misleading information**

- (a) A person must not—
- (i) give information that is false or misleading in a material particular; or
  - (ii) make a statement that is false or misleading in a material particular; or
  - (iii) produce a document that is false or misleading in a material particular—
- to the Secretary, a Council, the Chief Health Officer or an authorised officer under this Act or the regulations without indicating the respect in which it is false or misleading and, if practicable, providing correct information.
- Penalty:            In the case of a natural person, 60 penalty units;  
                          In the case of a body corporate, 300 penalty units.
- (b) A person must not make an entry in a document required to be kept by this Act or the regulations that is false or misleading.
- Penalty:            In the case of a natural person, 60 penalty units;  
                          In the case of a body corporate, 300 penalty units.
- (c) In a proceeding for an offence against subsection (1) or (2) it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that the information, statement or document was true or was not misleading.

- (2) Section 203 of the PHW Act provides:

### **Compliance with direction or other requirement**

- (a) A person must not refuse or fail to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199.
- Penalty:            In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

- (b) A person is not guilty of an offence against subsection (1) if the person had a reasonable excuse for refusing or failing to comply with the direction or requirement.

*Note: section 209 of the **PHW Act** provides for infringement notices to be served on any person who has refused or failed to comply with a direction given to the person, or a requirement made of the person, in the exercise of a power under an authorisation given under section 199. The amount payable pursuant to the infringement notice varies depending on the nature of the failure or refusal.*



**Adjunct Clinical Professor Brett Sutton**

Chief Health Officer, as authorised to exercise emergency powers under sections 20A and 199(2)(a) of the PHW Act.

9 October 2021



**SCHEDULE 1 — SPECIFIED BUSINESSES**

Specified Business (Column 1)	Operator (Column 2)	Worker (Column 3)	Patron limit (Column 4)	Vaccinated patron limit (Column 5)	Relevant date (Column 6)
outdoor <b>personal training</b>	<b>personal trainer</b>	any person (including a volunteer) conducting outdoor <b>personal training</b> , including: (a) a self-employed <b>personal trainer</b> ; (b) an employee of the <b>operator</b> ; and (b) any contractor engaged by the <b>operator</b> .	2 patrons outdoors at one time	5 patrons outdoors at one time that are all either <b>fully vaccinated or excepted persons</b>	29 September 2021

## SCHEDULE 2 — SPECIFIED VENUES

Specified Venue (Column 1)	Capacity limit (Column 2)	Vaccinated capacity limit (Column 3)
A theatre in the Restricted Area that is operated in accordance with the circumstances specified in clause 7(9)(c) of the <b>Restricted Activity Directions (Restricted Areas)</b>	The maximum number of <b>workers</b> in each <b>indoor space</b> or <b>outdoor space</b> at any one time is the greater of: (a) the lesser of: (i) a density quotient of 2; and (ii) 60 people; or (b) the lesser of: (i) a density quotient of 4; and (ii) 120 people.	The maximum number of <b>workers</b> who are all either <b>fully vaccinated</b> or <b>excepted persons</b> in each <b>indoor space</b> or <b>outdoor space</b> is the lesser of: (a) a density quotient of 2; and (b) 120 people.
A theatre in Regional Victoria that is operated in accordance with the circumstances specified in clause 9(4) of the <b>Restricted Activity Directions (Regional Victoria)</b>	The maximum number of <b>workers</b> in each <b>indoor space</b> at any one time is the greater of: (a) the lesser of: (i) a density quotient of 2; and (ii) 60 people; or (b) the lesser of: (i) a density quotient of 4; and (ii) 120 people.	The maximum number of <b>workers</b> who are all either <b>fully vaccinated</b> or <b>excepted persons</b> in each <b>indoor space</b> is the lesser of: (a) a density quotient of 2; and (b) 120 people.